By the preamble Abdul Rahman as the "tenant" agrees with the defendant as the "sub-tenant" to let him "occupy and possess" the premises for a term of one and a half years. By clause 1 the defendant is to pay to Abdul Rahman $800, which Abdul Rahman is to have no claim upon them. By clause 4 the agreement is to expire on the 28th February, 1951. By clause 5 the defendant is to quit and give up possession upon the expiry of this agreement.

On behalf of the defendant Mr. Macassey has argued that the agreement is in substance a mortgage. I think that the conclusive answer to that is that whether Abdul Rahman repaid the $800 or not the defendant was bound to give up possession upon the expiration of the agreement at the end of one and a half years. Thus his security for the loan was for a fixed period only. Moreover the rent receipts which the defendant gave to the sub-tenants were signed by him as attorney.

I have no doubt that the agreement is not a tenancy agreement. As a fact Rahman failed to repay the loan and the defendant has obtained a judgment against him. And on the 1st March (the day after the agreement expired) Abdul Rahman surrendered the tenancy and the plaintiff became the principal tenant in his place.

There must be Judgment for the plaintiff in respect of items (i)*, (ii)†, and (v)‡ of paragraph 5 of the Statement of Claim. Upon the question of damages I do not take the view that the defendant has been contumacious in regard to these proceedings. His view of the construction of the agreement was not unreasonable, although in my view it was wrong. The plaintiff is entitled to the rent which the defendant would have paid for the portion of the room which he occupied. This is to be assessed at $4 per month for 19 months and I award the sum of $76 as damages.

Stay of execution till end of this month, to be extended if notice of appeal filed within that time.

From the above decision the defendant appealed.

Murray-Aynsley, C.J. : — The proceedings in this case arose out of what can be described as an hypothecation of a tenancy held by one Abdul Rahman to secure a loan of $800 made by the appellant. This transaction took the form of a power of attorney to enable the appellant to collect rents and also an agreement which purported to be a sub-demise to the appellant for 18 months.

The loan was not repaid but when the period of 18 months had expired the borrower Abdul Rahman assigned his interest in the premises to the respondent who had no notice of the claims of the appellant. In the Court below the argument turned entirely on whether a sub-tenancy was created. On the assumption that if a sub-tenancy was created, the Control of Rent Ordinance would apply, the appellant having during the currency of the alleged term occupied part of the premises. Unless the Ordinance applies there is clearly no answer to the respondent's claim. The learned Judge who heard the case held that the transaction did not amount to a sub-demise; I do not feel inclined to disturb this finding. In any event it was not within the contemplation of the Ordinance that its protection should be given to a mere mortgagee.

I would dismiss the appeal with costs. Deposit to respondent.

Mathew, C.J. (F.M.) : — I have had the advantage of reading the judgment of the learned President of this Court with which I agree and have nothing to add.

Knight, J. : — I agree.

Appeal dismissed.

* (i) A declaration that the defendant is not a tenant or sub-tenant statutory or otherwise of the premises No. 103, Bukit Timah Road, Singapore, or any part thereof.

† (ii) For possession of the middle room of the ground floor of the said premises No. 103, Bukit Timah Road, Singapore.

‡ (v) Costs.

PARK & FRANCIS LTD. v. NG ENG KIAT.

[O. C. J. (Murray-Aynsley, C.J.) August 13, 1953]
[Singapore — Civil Suit No. 651 of 1952]

Contract — Offer and acceptance without definite consideration — Work abandoned — Quantum Meruit.

The plaintiff in this case claimed from the defendant $12,237.18 "for work done and expense incurred by the plaintiffs for the defendant at his request". The work was to bore 60 holes on the defendant's land in order to look for tin there. The defendant paid $5,000 advance and the work commenced on April 9th and continued until the end of May when the work was abandoned with 14 holes bored.

The defendant alleged that a letter from the plaintiffs dated 5th April constitutes an offer where the plaintiffs were obliged to bore 60 holes at the maximum charge of $10,000 at **pro rata** basis when work is abandoned and the defendant has accepted this offer. Therefore the defendant has overpaid.

While work was in progress it was found that the costs would be heavier than estimated and that if the work was completed the total cost would have been $40,000 or more. No communication was made to the defendant until a telegram was sent on May 14th asking for more money and no letter was sent to the defendant until June after the work had been abandoned.

Held: the defendant was not liable in any event for expenditure incurred after the plaintiffs had failed to communicate with him particularly when the letter of April 5th contemplated cessation of work after boring a few holes.

CIVIL SUIT.

George J. Okell for the plaintiffs.

T. W. Ong for the defendants.

Cur. Adv. Vult.

Murray-Aynsley, C.J. : — This litigation arose out of some unsuccessful prospecting for tin in the Settlement of Malacca.

The defendant was beneficially interested in certain land in the neighbourhood of Jasin and was optimistic

enough to hope to find tin there. After some conversation a Mr. O'Hara, an employee of the plaintiffs, visited the land in question and made a report. On the strength of this a Mr. Hazlitt, Managing Director of the plaintiff Company, wrote a letter on February 5th. I think it is clear that the report and the letter both contemplate boring on the land of the defendant and on some adjoining unalienated land Lot No. 1131. To this the defendant replied on February 7th. The defendant paid $5,000 in advance, and the work began on April 9th and continued until the end of May by which time work was abandoned with 14 holes bored. The cost according to the claim of the plaintiffs was $12,237.18, and they claim the balance "for work done and expense incurred by the plaintiffs for the defendant at his request." The claim includes, in addition, remuneration for the plaintiffs.

The defence alleges that the letter of April 5th constituted an offer which was accepted by the defendant with the result that the plaintiffs were obliged to bore 60 holes at a maximum charge of $10,000 and claims that the defendant is only liable pro rata for the work done at the time when prospecting was abandoned. If this is so, it is clear that the defendant has overpaid, although certain expenditure, e.g. the transport of labour and tools to and from the site, would be the same whether much or little work were done. On the other hand, even if the letter of April 5th did not constitute an offer, I think that it had the effect of limiting the authority of the plaintiffs to incur expenditure. The estimate of the cost of $6,000 to $10,000 was the opinion of an expert on which the defendant relied when he decided whether or not to go on with the prospecting. The report of Mr. O'Hara indicated that the work would be difficult and it is hard to see on what the estimate of $10,000 as the maximum cost was based. In any event as soon as prospecting began it was clear that the cost would be much heavier than the estimate and from the beginning the recovery of tin was either nothing or insignificant. It seems that in the circumstances it was clearly the duty of the plaintiffs to inform the defendant of what was going on and to find out his wishes. If the work had been completed the total cost would have been $40,000 or more — a very different sort of a proposition to that envisaged on April 5th. Actually no communication was made to the defendant until May 14th when a telegram was sent asking for more money and no letter was received by the defendant until June after the work had been abandoned. Two letters had been sent towards the end of May but they were wrongly addressed and seem to have been returned. But in any event these letters were sent much too late, after most of the expenditure had been incurred. If the plaintiffs had communicated with the defendant, as they should have done, he would have been able to stop the work before most of this useless expenditure had been incurred. I do not think that in any event the defendant is liable for expenditure incurred after the plaintiffs had failed to communicate with him, particularly as the letter of April 5th contemplated cessation of work after boring a few holes. I do not think that the plaintiffs are entitled to more than $4,500.

As a result there will be judgment for the defendant on the claim and the counterclaim, the defendant is entitled to $500 with costs on both claim and counterclaim.

Judgment for the defendant.

Re LOVENS KEMISKE FABRIK VED. A. KONSTED'S APPLICATION FOR REGISTRATION of TRADE MARK "LEOCILLIN".

[Trade Mark Application (Harrison, Registrar) July 17, 1953]

[Singapore — Trade Mark Application No. 13828]

Trade Marks Ordinance, 1938 — Opposition to registration — Mark likely to deceive or cause confusion — Principles to apply.

The applicants were seeking to register in Part A of the Trade Marks Register a mark consisting of the word "LEOCILLIN", in respect of "Pharmaceutical preparations and substances consisting of or containing penicillin". The applicants had not actually used the mark in Singapore up to the date of this application.

The opponents had used in Singapore since 1949, a mark consisting of the word "LEDERCILLIN" in respect of medicinal and pharmaceutical preparations (including penicillin), but had not applied for the registration of this mark in Singapore.

The opponents lodged an objection against the Registration of the applicants' mark on the grounds of the similarity to the mark "LEDERCILLIN", and to its being likely to deceive or cause confusion.

Held: (1) in deciding whether the registration of the mark would be likely to deceive or cause confusion all the circumstances of the case should be considered and in particular the type of person who would deal in the goods, and the manner in which the goods would be dealt with; (2) as regards penicillin products, whilst actual sales would be made chiefly to medical practitioners, the drugs would be handled extensively by chemists, their assistants, and Sisters and Nurses in hospitals and clinics. Many of these latter persons would not be very conversant with the English language, and the risks of their confusing two such similar names as Leocillin and Ledercillin would be considerable; (3) these products were likely to be supplied in small bottles, with the mark printed in small type, which made the risk of confusing two such similar words greater; (4) it was particularly important in the public interest that there should not be any risk of confusion between trade marks in the case of drugs; (5) in all the circumstances the applicants, although acting in good faith, had not discharged the onus which was on them to satisfy the Registrar that the mark was a proper one for registration, and the Application for Registration should not therefore proceed.

Cases referred to:—

(1) *Eno v. Dunn* 10 R.P.C. 261.